

Appl. No. 10/774,768  
Atty. Docket No. 9490  
Amdt. dated March 1, 2006  
Reply to Office Action of Dec. 1, 2005  
Customer No. 27752

#### REMARKS

Claims 1-6 and 21-22 are pending in the present application. Claims 7-20 were withdrawn from consideration by the Office. Claims 1-6 and 21-22 were rejected by the Office.

Claims 4 and 7-20 are canceled without prejudice.

Claim 1 has been amended to include the phrase "having a front region, a back region, a belt zone extending circumferentially about the absorbent article, a wearer-facing surface, and a garment-facing surface; said absorbent article." Support for this amendment may be found on page 5, lines 28-33 and page 6, lines 29-32 of the specification. Claim 1 has been amended to include the phrase "and connecting the front region to the back region thereby forming a leg opening and a waist edge." Support for this amendment may be found on page 5, line 35 to page 6, line 2. Claim 1 has been amended to include the phrase "wherein the handle is a flap comprising a stratum, wherein the flap forms a gap between the stratum and the chassis or sidewall." Support for this amendment may be found on page 12, line 34 to page 13, line 12 of the specification. Claim 1 has been amended to include the phrase "wherein said flap is joined to the garment-facing surface of the article by opposing longitudinal welds disposed proximate to opposing distal longitudinal edges of the flap." Support for this amendment may be found on page 13, lines 19-24.

Claim 5 has been amended to correct the dependency from Claim 4 to Claim 1. Claim 5 has been further amended include the phrase "wherein said stratum is a portion of the belt zone that has been folded away from the wearer-facing surface of the article at a hinge point." Support for the amendment is found at page 13, lines 10-28 of the specification.

Claim 6 has been amended to correct the dependency from Claim 4 to Claim 1. Claim 6 has been further amended include the phrase "wherein said stratum is discrete." Support for the amendment is found at page 13, lines 29-30 of the specification.

Claim 21 has been amended to correct an issue involving antecedent basis.

In addition, new Claims 23-33 have been added. Support for new Claim 23 may be found on page 14, lines 3-4; page 14, lines 18-16; and Figures 2a and 2d. Support for new Claims 24-25 is found at page 13, lines 10-28 of the specification and in Figure 2a. Support for new Claim 26 is found on page 14, lines 6-10 of the specification and in

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Figure 2d. Support for new Claim 27 may be found in Claim 1. Support for new Claim 28 is found on page 15, lines 22-23 of the specification. Support for new Claim 29 is found in Figure 2a. Support for new Claim 30 is found in Figure 2d and on page 6, lines 13-19. Support for new Claims 31-32 is found on page 21, lines 4-18 of the specification. Support for new Claim 33 is found on page 21, line 4 to page 22, line 31 of the specification.

These changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102

Claims 1-6 and 21 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,213,991 to Kling et al. (hereafter "Kling"). In support of this rejection, the Office states:

Kling discloses pull-on pant diaper with gripping means for assisting the application of the article onto a wearer (column 1, lines 26-30, column 4, lines 6-14) comprising diaper 1 with a sidewall disposed adjacent a chassis (column 6, lines 30-36); said sidewall comprising side panel 13 (figure 1), and at least one fastener element/handle 23 disposed adjacent either the chassis or sidewall (column 9, lines 1-3, figures 1-3).

Applicant asserts that the amended claims render the rejection moot.

Kling relates, in part, to an absorbent article having a first and second corner portions each having a first surface and a second surface which is opposed to the first surface; fastener elements disposed on the first surface of the respective first and second portions; and a gripping means provided on the second surface of the corner portions of the rear part of said absorbent article. *See Abstract.* Kling states, "The gripping means 24, 25 are disposed essentially opposite their respective fastener elements 22, 23 and have essentially the same size and shape as these elements." Col. 9, lines 24-26. Kling is explicit as to the purpose of the gripping means. Kling, at column 9, lines 38-58, states:

The purpose of the gripping means 24, 25 is to enable the diaper 1 provided with elastic front and rear parts 2, 3 to be placed more easily on a wearer. When applying the diaper to a recumbent user, the rear corner portions 15, 16 of the diaper will typically be so contracted as to lie relatively inaccessible beneath the diaper wearer. If no gripping means 24, 25 were provided, the person involved in handling the diaper would need to insert his/her hands beneath the wearer and grip a respective

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corner portion 15, 16 with the fingers placed on opposite sides of the pants layer 12. Firstly, it is difficult to localize the corner portions of the diaper when these portions are hidden beneath the wearer. Secondly, it is difficult to grip a thin, highly pliable layer of material, such as the pants layer 12, and stretch the layer out flat before fastening the fastener elements of the fastener device, at which time it is necessary to grip the pants layer 12 with the fingers on opposite sides of said layer, wherewith said person has four fingers on one side of the layer and solely the thumb as a counterpressure means on the other. Thirdly, the thumb will be in the way when fastening together the respective fastener elements 20, 23 and 21, 22.

The gripping means of Kling is designed to improve fastening of the article, particularly when the article is applied to a recumbent wearer. As can be appreciated from Figure 3 of Kling, a person applying the diaper can pull the gripping means (25) thereby extending the elastic pants layer (12). Col. 10, lines 4-7. The person can then fasten the hook-carrying element (23) to the loop-carrying element (20). Col. 10, lines 7-10. As should be appreciated, a transverse force is being applied to the gripping means (25) which allows for the transverse extension of the elastic pants layer (12). Likewise, the gripping means (25) is constructed to receive and transmit the transverse force. Conversely, the present invention relates to a pull-on garment having a handle constructed to aid in the application of the pull-on garment. Pull-on garment application involves insertion of a wearer's feet through the leg openings and elevating the pull-on up the wearer's legs and over the wearer's buttocks to achieve an ideal snug fit. The handle of the present invention is constructed to receive and transmit the longitudinal force that is applied during application of the pull-on garment.

Case law clearly states, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); *See also* MPEP § 2131. Claim 1, as amended, recites an absorbent article comprising "at least one handle for assisting in the application of the article onto a wearer; wherein the handle is a flap comprising a stratum, wherein the flap forms a gap between the stratum and the chassis or sidewall, wherein said flap is joined to the garment-facing surface of the article by opposing longitudinal welds disposed proximate to opposing distal longitudinal edges of the flap." Kling states, at column 9, lines 27-31, "[G]ripping means 24, 25 are also joined to the pants layer 12 along three of their edges

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24a-c, 25a-e (sic), i.e. all edges with the exception of the edge 24d, 25d which lies closest to the longitudinally extending contemplated diaper center line." The gripping means of Kling forms a pocket-like structure with an opening that is entered transversely. Kling does not teach Applicant's flap handle having opposing longitudinal welds proximate to the longitudinal edges of the flap.

Furthermore, Kling cannot be modified to have opposing longitudinal welds proximate to the longitudinal edges (i.e., 24a, 24d, 25a, 25d) of the gripping means (24, 25) without destroying the functionality of the gripping means. Opposing longitudinal welds would prevent a pocket from being formed that could allow a person to engage the gripping means in a transverse direction as shown in Figure 3 of Kling.

The remaining claims are dependent from and contain all the limitations of Claim 1. Since Claim 1 is patentably distinct over Kling, the remaining dependent claims are likewise patentably distinct over Kling.

With regard to Claim 2, the Office states, "Kling discloses absorbent body 10 located between liquid impermeable barrier layer/top sheet 9 and liquid permeable outer material/back sheet 11 (column 11, lines 64-67)." Applicant believes that the Office has inverted the Kling structures. It is the liquid impermeable barrier layer (9) that may arguably be equivalent to Applicant's backsheet since both structures are liquid impervious. However, with regard to Claim 3, Applicant fails to find a passage in Kling teaching that the barrier layer (9) comprises a nonwoven outer cover.

Claims 1 and 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,163,932 to Nomura et al. (hereafter "Nomura"). In support of this rejection, the Office states, "Nomura discloses disposable pants type absorbent wearing article comprising: at least one sidewall with side edges/ear panels, and at least one grip ear/handles 20A, 20B" (citations omitted). The Office further states, "Nomura discloses handles 20A, 20B are flaps comprising a stratum, wherein the flap forms a gap between the stratum and article chassis." In light of the amendment to Claim 1, the Office's rejection is now moot.

Nomura discloses grip-ears (20A, 20B) extending outwardly from the side edges (10A, 11A) of the front body (10) and the rear body (11). Col. 5, lines 43-47. The grip-ears form a gap; however, the gap is between the two grip-ears and not between the "stratum and the chassis or sidewall" as recited in Claim 1. Furthermore, Claim 1 recites

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"said flap is joined to the garment-facing surface of the article by opposing longitudinal welds disposed proximate to opposing distal longitudinal edges of the flap." Applicant fails to find a passage in Nomura teaching that its grip-ears are joined to the garment-facing surface of the article by opposing longitudinal welds.

In light of the arguments presented above, Applicant requests the withdrawal of the §102 rejections.

REJECTIONS UNDER 35 USC § 103(a)

Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kling in further view of U.S. Publication No 2002/0099353A1 to Olson (hereafter "Olson"). The Office states that Kling does not expressly disclose an instruction to the caregiver. The Office points to Olson for disclosing wetness-indicating graphics and instructions. The Office concludes, "One would be motivated to modify the absorbent article with flap of Kling with the kit and instructions of Olson to enable the user to determine proper absorbent article use since both references are in the same field of endeavor." Applicant traverses the rejections.

Olson does not address the deficiencies of Kling with regard to Claim 1. Therefore, since Claim 1 is patentably distinct over Kling and Olson, Claim 21, which is dependent from Claim 1, is likewise patentably distinct over Kling and Olson.

Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kling in further view of U.S. Patent 6,229,061 to Dragoo et al. (hereafter "Dragoo"). The Office states that Kling does not expressly disclose a containing more than one absorbent article with a readily accessible handle. The Office asserts:

Dragoo further discloses a plurality of disposable diapers 20 and inserts 10 packaged in the same package with an easy-opening device 225 on the package, the package thereby forming a kit having handle 62 capable of being readily accessible from the kit because the packaging that forms that kit facilitates user gripping of the individual diaper 20 from the package. . . . One would be motivated to modify the absorbent article of Kling with the kit with readily accessible handle to enable the user to easily grab the diaper since both references are in the same problem-solving area . . . .

Applicant traverses the rejection.

The Office states that Dragoo teaches a handle (e.g., ear flaps 62). Given the amendment made to Claim 1, Applicant contends that the ear flap 62 of Dragoo fails to include all of the structural limitations of the handle (e.g., "flap forms a gap between the

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stratum and the chassis or sidewall, wherein said flap is joined to the garment-facing surface of the article by opposing longitudinal welds disposed proximate to opposing distal longitudinal edges of the flap"). Dragoo does not correct the deficiencies of Kling with regard to Claim 1. Therefore, since Claim 1 is patentably distinct over Kling and Dragoo, Claim 22, which is dependent from Claim 1, is likewise patentably distinct over Kling and Dragoo.

For the reasons presented above, the Office has failed to present a *prima facie* case of obviousness with respect to Claims 21 and 22. Applicant respectfully requests withdrawal of the rejection.

#### CONCLUSION

This response represents an earnest effort to place the application in proper form and to distinguish the invention as claimed from the cited documents. In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection based on 35 U.S.C. §§ 102(b) and 103(a). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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